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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Zion Z. Kauffman,

No. CV 21-08231-PCT-JAT (JZB)

10 Plaintiff,

11 v.

ORDER

12 Karolina Czaplinska,

13 Defendant.
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15 On October 20, 2021, Plaintiff Zion Z. Kauffman, who is confined in the Mohave
16 County Jail, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983. On
17 November 3, 2021, Plaintiff filed an Application to Proceed In Forma Pauperis. In a
18 November 9, 2021 Order, the Court denied the deficient Application to Proceed with leave
19 to refile within 30 days. Subsequently, Plaintiff filed two more deficient Applications to
20 Proceed In Forma Pauperis. In a December 17, 2021 Order, the Court denied Plaintiff's
21 third deficient Application to Proceed and gave him a final opportunity, within 30 days, to
22 pay the filing and administrative fees or file a complete Application to Proceed In Forma
23 Pauperis.

24 On January 3, 2022, Plaintiff filed a fourth Application to Proceed In Forma
25 Pauperis. (Doc. 10). Plaintiff again failed to complete and sign the Application to Proceed
26 and failed to file a certified trust account statement. In the December 17, 2021 Order
27 denying Plaintiff's third Application to Proceed In Forma Pauperis, the Court explicitly
28 warned Plaintiff that he would have only one more opportunity to file a complete

1 Application to Proceed, which he failed to do. It is well established that under Federal
2 Rule of Civil Procedure 41(b), a district court has authority to dismiss a plaintiff's action
3 because of his failure to comply with court orders. *See* Fed. R. Civ. P. 41(b); *Ferdik v.*
4 *Bonzelet*, 963 F.2d 1258, 1260 (1992) (holding that a district court may dismiss an action
5 for failure to comply with any order of the court).

6 In determining whether Plaintiff's failure to comply with the Court's Orders
7 warrants dismissal of the case, the Court must weigh the following five factors: "(1) the
8 public's interest in expeditious resolution of litigation; (2) the court's need to manage its
9 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
10 of cases on their merits; and (5) the availability of less drastic sanctions." *Carey v. King*,
11 856 F.2d 1439, 1440 (9th Cir. 1988) (per curiam) (quoting *Henderson v. Duncan*, 779 F.2d
12 1421, 1423 (9th Cir. 1986)). "The first two of these factors favor the imposition of
13 sanctions in most cases, while the fourth factor cuts against a default or dismissal sanction.
14 Thus the key factors are prejudice and availability of lesser sanctions." *Wanderer v.*
15 *Johnson*, 910 F.2d 652, 656 (9th Cir. 1990).

16 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's
17 repeated failure to comply with the Court's Orders prevents the case from proceeding in
18 the foreseeable future. The fourth factor, as always, weighs against dismissal. The fifth
19 factor requires the Court to consider whether a less drastic alternative is available.

20 The Court finds that only one less drastic sanction is realistically available. Rule
21 41(b) provides that a dismissal for failure to comply with the Court's orders operates as an
22 adjudication upon the merits "[u]nless the dismissal order states otherwise." In the instant
23 case, the Court finds that a dismissal with prejudice would be unnecessarily harsh. The
24 Complaint and this action will therefore be dismissed without prejudice pursuant to Rule
25 41(b) of the Federal Rules of Civil Procedure.

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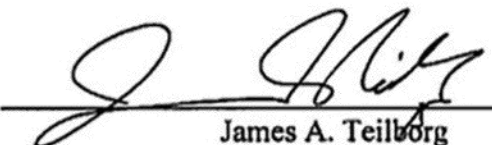
1 **IT IS ORDERED:**

2 (1) This action is dismissed without prejudice for failure to comply with the
3 Court's Orders pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk
4 of the Court must enter judgment accordingly and close this case.

5 (2) Plaintiff's Application to Proceed in Forma Pauperis (Doc. 10) is **denied as**
6 **moot.**

7 Dated this 12th day of January, 2022.

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James A. Teilborg
Senior United States District Judge